

STATE OF MICHIGAN
COURT OF APPEALS

DOUGLAS J. CROWLEY, DONALD S.
SUTHERLAND, and MICHIGAN CITIZENS
FOR WATER CONSERVATION,

UNPUBLISHED
February 14, 2003

Plaintiffs-Appellants,

v

MORTON TOWNSHIP and LEWIS L.
JOHNSON, Township Clerk,

No. 234954
Mecosta Circuit Court
LC No. 01-014405-CE

Defendants-Appellees

and

GREAT SPRING WATERS OF AMERICA, INC.,

Intenor/Defendant-Appellee.

Before: Sawyer, P.J., and Jansen and Donofrio, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order denying their requests for declaratory relief, superintending control and mandamus. We affirm.

In this case, plaintiffs sought to compel the holding of a referendum election, pursuant to MCL 125.184, regarding two separate, but related, amendments to zoning ordinances adopted by the Morton Township Board of Trustees. The two amendments to the zoning ordinances were necessary to allow Great Spring Waters of America, Inc., a large producer of bottled spring water, to construct a highly controversial water pumping and bottling project. The changes included expanding an industrial area to include its prospective bottling plant site; allowing water wells, pipes, and equipment in all zoning districts; and specifically excluding water pipes and pumps from the township's setback requirements. The township board subsequently passed the proposed rezoning amendment as Ordinance 34, and the proposed setback and exemption amendments as Ordinance 35.

Plaintiffs filed a single referendum petition challenging the ordinances. However, because the single petition contained both Ordinance 34 and Ordinance 35, defendant Lewis L. Johnson, the township clerk, rejected the petition as "inadequate" under MCL 125.282.

Specifically, the township clerk claimed that he was bound by *Reva v Portage Twp*, 356 Mich 381; 96 NW2d 778 (1959), which held that the statute in question did not allow petitioners to place more than one ordinance or amendment on a single zoning-referendum petition.

Plaintiffs then filed a complaint, seeking declaratory judgment, injunctive relief and mandamus to compel Morton Township to hold a referendum on the two ordinances. Following a hearing, the trial court held that the doctrine of superintending control was not applicable, and thus denied plaintiffs' request for relief under that doctrine. In addition, the trial court, relying on *Reva*, agreed with the township clerk that plaintiffs' petition failed to meet the requirements of MCL 125.184 because it combined into a single petition a request for a vote on two separate ordinances. The trial court therefore denied plaintiffs' requests for injunctive relief and mandamus. On appeal, plaintiffs contend that the trial court erred in denying their request for a writ of mandamus because their petition substantially complied with the statutory requirements found in MCL 125.282.

A trial court has the discretion to grant or deny a writ of mandamus. *BINGO v Bd of Canvassers*, 215 Mich App 405, 413; 546 NW2d 637 (1996).

Issuance of a writ of mandamus is proper where (1) the plaintiff has a clear legal right to performance of the specific duty sought to be compelled, (2) the defendant has the clear legal duty to perform such act, and (3) the act is ministerial, involving no exercise of discretion or judgment. [*Id.* (quoting *Tuscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-511; 522 NW2d 686 (1994))].

The statute at issue, MCL 125.282, allows registered voters residing in a township to file a petition to submit "an ordinance or part of an ordinance to the electors residing in the portion of the township outside the limits of cities and villages for their approval." *Green Oak Twp v Green Oak M.H.C.*, ___ Mich App ___; ___NW2d ___ (2003) (Docket No. 231704) slip op pp 2-4. The statute further provides that if a petition containing the proper number of signatures is filed within thirty days after the ordinance's publication and the township clerk determines that the petition is adequate, then the ordinance will not take effect unless a majority of the voters approve it in an election. On the other hand, the ordinance will take immediate effect if the township clerk determines that the petition is inadequate.

In this case, *Reva* is binding Supreme Court authority that supports the trial court's decision to deny plaintiffs' request for a writ of mandamus. In *Reva*, *supra* at 386, the Michigan Supreme Court, interpreting a previous version of MCL 125.282, held that the Legislature did not intend to allow petitioners to place more than one ordinance or amendment on a single referendum petition. At the time of the decision in *Reva*, the statute provided in pertinent part that "following the passage by the township board or its rejection of such zoning ordinance, a petition . . . may be filed with the township clerk praying therein for the submission of such ordinance to the electors." *Id.* at 382, n 1. In that case, the plaintiffs filed petitions, with the Portage Township Board, challenging one ordinance and part of another. Holding that the Legislature intended to limit each petition to one ordinance when it used the singular tense of "ordinance" in MCL 125.282, the Court in *Reva* affirmed the trial court's order denying the plaintiffs' request for declaratory relief, ruling that their petitions were "void for duplicity." *Id.* at 386-387.

Although the Legislature has amended MCL 125.282 since the Supreme Court's decision in *Reva*, the statutory changes have not materially altered the *Reva* holding that prohibits one referendum petition from challenging more than one ordinance in a single referendum petition.¹ Therefore, the Morton Township Clerk was compelled by *Reva* to find plaintiffs' petition to be inadequate under MCL 125.282 because their petition contained two different ordinances. Accordingly, the trial court did not abuse its discretion in denying plaintiffs' request for a writ of mandamus.

In so concluding, we decline plaintiffs' invitation not to follow *Reva* based upon their assertion that case law since *Reva* has liberally construed referendum provisions, such as MCL 125.282. Under the doctrine of stare decisis, we are required to follow *Reva*. *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993).

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Pat M. Donofrio

¹ The version of the statute at the time of *Reva* provided in pertinent part that "a petition . . . praying therein for the submission of such ordinance to the electors." 1972 PA 107 amended "such" to "any." 1978 PA 637 further amended the statute to provide in pertinent part that a "petition . . . requesting the submission of an ordinance or part of an ordinance to the electors." This amendment, while superceding *Reva*'s holding with regard to a referendum petition addressing part of an ordinance, did not alter its primary holding that two ordinances may not properly be the subject of a single petition.